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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,503	04/11/2001	Thomas E. Benim	DP6945 US NA	2453

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EXAMINER
RHEE, JANE J

ART UNIT	PAPER NUMBER
1772	16

DATE MAILED: 07/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

A 5-16

Office Action Summary	Applicati n No.	Applicant(s)	
	09/832,503	BENIM ET AL.	
	Examiner	Art Unit	
	Jane J Rhee	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the corresp ndence address --

Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *5/14/03* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disp sition of Claims

4)☒ Claim(s) *1-4,6-11 and 18-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6-11 and 18-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 15 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/14/03 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1-4,6-11,18-34 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new matter is the upper limitation of the thickness of the label stock, "less than 0.7 inch (0.1778)".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3,9,11,27,28,31,32,33, are rejected under 35 U.S.C. 102(b) as being anticipated by Frankosky et al. (5527600).

Frankosky et al. discloses a thermal insulating layer having a thermal resistance in the range of 0.05 to 0.5 CLO (col. 5 lines 41-43), which is laminated to a face material (col. 2 lines 41-45), wherein the label stock is at least 0.0075 inch thick (col. 3 lines 57-58). Frankosky et al. discloses that the face material comprises a fabric and that the thermal insulating layer comprises a fiberfill batt (col. 3 lines 58-61). Frankosky et al. discloses that the label stock is sealed at its upper, lower and side edges (col. 2 lines 27-28). Frankosky et al. discloses that the thermal insulating layer comprises an organic thermoplastic fiber based material comprising polyester, polyethylene or polypropylene (col. 3 lines 59-60 and col. 4 lines 11-13). Frankosky et al discloses that the insulating film is laminated to at least one sheet of coextruded film which comprises a first layer and a second layer, wherein the first layer and the second layer are made of different materials, and the second layer has a lower melting temperature the material of the first layer, so that when the face material is heated, the second layer softens and adheres to the thermal insulating layer when pressure is applied (col. 2 lines 5-14).

> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application

being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-4,6, 8-9,11, 18-19,21.23,24,27,30-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Barre (6286872).

Barre discloses an insulating label stock comprising an insulating layer (col. 2 lines 28-30) laminated to a face material (col. 2 lines 17-19) wherein the label stock has a thickness greater then 0.0075 inch and less than 0.07 inch (col. 2 lines 17-42). Barre discloses that the face material comprises paper or film (col. 2 line 18) and that the insulating layer comprises fiberfill batt (col. 2 lines 28-30). Barre discloses a coating on the face material wherein the coating is printable (col. 2 lines 64-67, col. 3 lines 1-11). Barre discloses that that the label stock is sealed at its edges (figure 1 number 9 and 5). Barre discloses that the film is made of a thermoplastic material comprising polyethylene or polypropylene (col. 2 lines 17-18). Barre discloses that the face material is modified on the surface facing away from the thermal insulating layer to facilitate bonding to another surface with an adhesive (figure 1 number 2 and 9). Barre discloses that the thermal insulating layer comprises an organic thermoplastic fiber based material comprising polyester, polyethylene or polypropylene (col. 2 lines 28-30). Barre discloses an insulating label stock comprising a thermal insulating layer (figure 1 number 2) which is laminated to at least one sheet of coextruded film which comprises a first layer and a second layer wherein the first layer and the second layer are made of different materials and the second layer has a lower melting temperature then the

material of the first layer (figure 1 numbers 9 and 4). Barre discloses that the label stock has a thickness in the range of 0.01 inch and 0.04 inch (col. 2 lines 20-21 and 38-39). Barre discloses an adhesive primer layer applied to the surfae of the face material facing away from the thermal insulating layer (figure 1 layer 9). Barre discloses a release liner provided on the surface of the adhesive primer layer facing away from the face material (figure 1 number 4). Barre discloses the face material comprising a first layer and a second layer, wherein the second layer is disposed between the thermal insulating layer and the first layer (figure 1 number 7).

Since Barre discloses that the thermal insulating layer comprising an organic thermoplastic fiber based material comprising polyester, polyethylene and polypropylene desired by the applicant, also the thickness of the label stock is greater than 0.0075 inch and less than 0.07, it is inherent that the thermal insulating layer has a thermal resistance in the range of 0.05 to 0.5 CLO.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 6,10,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frankosky et al. in view of Hobson (4871597).

Frankosky et al. discloses the insulating stock described above. Frankosky et al. fail to disclose that the film is made of a thermoplastic material comprising polyester, polyethylene or polypropylene. Frankosky et al. fail to disclose that the thermal insulating layer comprises foam. Hobson teaches that the film is made of a thermoplastic material comprising polyester (col. 4 line 31) for the purpose of adding strength to the structure (col.4 lines 32-33). Hobson teaches that the thermal insulating layer comprises a foam (col. 4 lines 7-10) for the purpose of serving as an insulator from convective heat transfer (col. 4 lines 7-8).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided Frankosky et al. with a film that is made of a thermoplastic material comprising polyester in order to add strength to the structure (col.4 lines 32-33) as taught by Hobson.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided Frankosky et al. with a thermal insulating layer that is a foam in order to serve as an insulator from convective heat transfer (col. 4 lines 7-8) as taught by Hobson.

5. Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frankosky et al. in view of Sqiddiqui (5453326) .

Frankosky et al. discloses the insulating stock as described above. Frankosky et al. fail to disclose a coating on the face material wherein the coating is printable. Frankosky et al. fail to disclose that the face material is modified on the surface facing away from the thermal insulating layer to facilitate printing thereon. Siddiqui teaches a

coating on the face material wherein the coating is printable and that the face material is modified on the surface to facilitate printing thereon (col. 3 lines 1-6 and 21-23) for the purpose of improving ink adhesion (col. 2 lines 55-57).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided Frankosky et al. with a coating on the face material which is modified on the surface facing away from the thermal insulating material wherein the coating is printable in order to improve ink adhesion (col. 2 lines 55-57).

6. Claims 22,25-26,29 rejected under 35 U.S.C. 103(a) as being unpatentable over Barre in view of Hobson (4871597).

Barre discloses the insulating stock described above. Barre fail to disclose another face material disposed on the side of the thermal insulating layer facing away from the second layer. Barre fail to disclose a second sheet of coextruded film wherein the second sheet of coextruded film comprises a first layer and a second layer and is disposed on the side of the thermal insulating layer opposite the first sheet of coextruded film. Barre fail to disclose that the coextruded film of the first layer and of the second layer is a biaxially oriented polyester film.

Hobson teaches a multilayer insulating enclosure comprising a face material comprising a first layer and a second layer, wherein the second layer is disposed between the thermal insulating layer and the first layer (figure 5 number 52,50,48) and another face material disposed on the side of the thermal insulating layer facing away from the second layer (figure 5 number 46) for the purpose of achieving maximum

insulation through the use of four layers (col. 1 lines 40-41). Hobson teaches a second sheet of coextruded film wherein the second sheet of coextruded film comprises a first layer and a second layer and is disposed on the side of the thermal insulating layer opposite the first sheet of coextruded film (figure 5 number 50 and 52) and that the coextruded film of the first layer and second layer is biaxially oriented polyester film (col. 4 lines 20-28) for the purpose of providing a radiant barrier to prevent conductive heat transfer (col. 4 lines 23-21) and to add strength to the structure (col. 4 lines 30-32).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Barre with a multilayer insulating enclosure comprising a face material comprising a first layer and a second layer, wherein the second layer is disposed between the thermal insulating layer and the first layer and another face material disposed on the side of the thermal insulating layer facing away from the second layer in order to achieve maximum insulation through the use of four layers (col. 1 lines 40-41) as taught by Hobson.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Barre with a second sheet of coextruded film wherein the second sheet of coextruded film comprises a first layer and a second layer and is disposed on the side of the thermal insulating layer opposite the first sheet of coextruded film and that the coextruded film of the first layer and second layer is biaxially oriented polyester film in order to provide a radiant barrier to prevent conductive heat transfer and to add strength to the structure (col. 4 lines 30-32) as taught by Hobson.

Response to Arguments

7. Applicant's arguments filed 5/14/03 have been fully considered but they are not persuasive.

In response to applicant's arguments that Barre does not disclose the thermal resistance in the range of 0.05 to 0.5 CLO, Barre discloses the thermal insulating layer comprising an organic thermoplastic fiber based material comprising polyester, polyethylene and polypropylene desired by the applicant, also the thickness of the label stock is greater than 0.0075 inch and less than 0.07, it is inherent that the thermal insulating layer has a thermal resistance in the range of 0.05 to 0.5 CLO. Applicant calculated the thermal resistance of Barre's insulating layer at the thickness of 20microns and 500microns, however fail to realize that applicant claimed that the label stock as a whole has a thickness greater than 0.0075inch and less than 0.07inch therefore did not calculate the thermal resistance of Barre's insulating layer and face material layer as a whole with the maximum thickness of 700 microns (0.0275 inches) when adding the maximum thickness of the face material, 200 microns (col. 2 line 19) and the maximum thickness of the insulating material 500microns (col. 2 line 38).

In response to applicant's argument that Barre and Franksoky does not disclose the top edge and the bottom edge are sealed, Barre discloses that side 3 in figure 1 is covered with adhesive composition and that label 1 is adheres to the package, therefore, the top, bottom, sides and center of the label is adhered to the package. Franksoky discloses that the upper and lower faces are sealed for the purpose of low

levels of fiber leakage through the shell fabrics (col. 1 lines 56) therefore it is inherent that the top and bottom edges are sealed in order to prevent the fiber leakage through the shell fabrics.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jane Rhee
July 22, 2003

ALEXANDER S. THOMAS
PRIMARY EXAMINER